HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 14, 2015
84th Legislature, Number 49
The House convenes at 10 a.m.

Ten bills are on the daily calendar for second-reading consideration today. They are listed on the following page.

Alma Allen
Chairman
84(R) - 49

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, April 14, 2015
84th Legislature, Number 49

SUBJECT: Placing direct primary care in statute and distinguishing it from insurance

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Crownover, Naishtat, Blanco, Coleman, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Collier, S. Davis

WITNESSES: For — Chris Larson, Texas Academy of Family Physicians; John Davidson, Texas Public Policy Foundation; (*Registered, but did not testify*: Annie Spilman, National Federation of Independent Business/TX; Amanda Martin, Texas Association of Business; Dan Finch, Texas Medical Association; David Reynolds, Texas Osteopathic Medical Association; Lauren Harkins)

Against — None

On — Mari Robinson, Texas Medical Board; (*Registered, but did not testify*: Pat Brewer, Doug Danzeiser, Margaret Jonon, and Jamie Walker, Texas Department of Insurance)

BACKGROUND: Direct primary care is a model for purchasing and delivering primary health care services in which physicians are paid a fee directly by patients rather than by a third party, typically an insurance company. According to the Texas Academy of Family Physicians, at least 400 direct primary care practices are currently operating in the state. Patients who purchase direct primary care must still maintain health insurance to receive coverage for specialty care and catastrophic events that require hospitalization.

DIGEST: CSHB 1945 would amend Occupations Code, ch. 162 to add subchapter F governing direct primary care.

Definitions. The new subchapter would define "direct primary care" to mean a primary medical care service provided by a physician to a patient

in return for a fee charged by the physician to the patient or the patient's designee, otherwise known as a "direct fee."

A "primary medical care service" under the subchapter would be a patient's main source for regular health services and would include:

- promoting and maintaining mental and physical health;
- preventing disease;
- screening, diagnosing, and treating acute or chronic conditions caused by disease, injury or illness;
- providing patient counseling and education; and
- providing a broad range of preventive and curative health care over a period of time.

A "medical services agreement" would be a signed written agreement through which a physician agreed to provide direct primary care services to a patient in exchange for a direct fee for a period of time agreed to by the physician and the patient or an entity representing the patient.

For purposes of subchapter F, the definition of "physician" in the Occupations Code would include a professional association or limited liability company owned entirely by a physician.

Direct primary care not insurance. The bill would specify that a medical service agreement was not subject to regulation by the Texas Department of Insurance and was not health or accident insurance or coverage under Title 8, Insurance Code, which governs health insurance and other health coverages.

CSHB 1945 further would specify that a physician providing direct primary care was not:

- an insurer or health maintenance organization;
- subject to regulation by the Texas Department of Insurance for providing such care;
- required to obtain a certificate of authority under the Insurance Code; or

- bound by provisions of the Insurance Code that forbid a physician or other provider from waiving a deductible or copayment owed by a person under a health insurance contract.

Other provisions. Under HB 1945, a physician could not bill an insurer or health maintenance organization for direct primary care that was paid under a medical service agreement.

The Texas Medical Board or another state agency, a health insurer, health maintenance organization, or health care provider could not prohibit, interfere with, or initiate a legal proceeding against:

- a physician solely because the physician provided direct primary care; or
- a person solely because the person paid a fee for direct primary care.

The bill would not apply to worker's compensation insurance coverage.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1945 would help create a better health care environment for both physicians and patients. The bill would specify that direct primary care is not health insurance because these practices do not assume risk. Instead, the direct primary care model involves the delivery of certain health care services under a contractual agreement outside the scope of state insurance regulations. Direct primary care provides patients with better access to their primary care physician, while affording physicians more time to spend with their patients instead of dealing with the cost and administrative burden of seeking reimbursement through a health insurance company.

Direct primary care results in lower downstream health care costs. Patients' access and close relationships with their primary care physicians tends to reduce the utilization of more expensive aspects of the health care system, such as hospitalizations, emergency room visits, specialist

referrals, and expensive tests and services such as MRIs. Traditional primary care practices spend nearly 65 percent of revenue on overhead. By removing the insurance bureaucracy from the process — including billing, coding, claims processing, and appeals — direct primary care practices report significantly reduced operating expenses.

The bill is necessary legislation, which would make clear in statute that direct primary care is not health insurance. While Insurance Code, sec. 843.073 stipulates that physicians engaged in the delivery of medical care are not acting as insurers, further clarity is needed in statute to create a legal and regulatory environment in which this model can grow in Texas, to the benefit of patients and physicians alike. Other states already have defined direct primary care in statute or are in the process of doing so, and Texas should as well.

By making clear that direct primary care is not insurance, the bill would address concerns about consumer protection and disclosure. Every direct primary care practice in Texas prominently discloses on its website that it is not insurance. In addition, nothing in CSHB 1945 would exempt the physician from common law contract requirements or the oversight of the Texas Medical Board.

OPPONENTS SAY:

CSHB 1945 would be unnecessary and redundant, because Insurance Code, sec. 843.073 already provides that a physician engaged in the delivery of medical care is not required to obtain a certificate of authority under the Texas Health Maintenance Organization Act.

While the bill would specify that direct primary care is not health insurance, it should require practices to inform consumers of this fact and other distinctions between the two models. Consumers considering entering into a direct primary care contract need to know, for example, that it will not pay for specialty care appointments and hospital visits. Voluntary disclosure of this information by direct primary care practices is not sufficient to protect and notify consumers.

NOTES:

The committee substitute differs from the bill as introduced in that CSHB 1945 includes language that would prevent a physician from billing a health insurer or a health maintenance organization for direct primary care

services paid under a medical service agreement. CSHB 1945 also would not apply to worker's compensation insurance coverage.

The Senate companion bill, SB 1018 by Hancock, was considered in a public hearing of the Senate Health and Human Services Committee on April 1 and left pending.

SUBJECT: Allowing TDCJ to award diligent participation credit to state jail felons

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt

0 nays

WITNESSES: For — Lance Lowry, American Federation of State County Municipal Employees-Texas Correctional Employees-Huntsville; Sarah Pahl, Texas Criminal Justice Coalition; Derek Cohen, Texas Public Policy Foundation; Lauren Johnson; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Cynthia Humphrey, Association of Substance Abuse Programs; Seth Mitchell, Bexar County Commissioners Court; Caitlin Dunklee, Grassroots Leadership; Gyl Switzer, Mental Health America of Texas; John Patrick, Texas AFL-CIO; Allen Place, Texas Criminal Defense Lawyers Association; Jennifer Erschabek, TIFA; Deece Eckstein, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Bill Stephens, Texas Department of Criminal Justice)

BACKGROUND: Under Penal Code, sec. 12.35, a person found guilty of a state-jail felony can be punished with 180 days to two years in a state jail and an optional fine of up to $10,000. The state currently has 19 state jails housing about 9,500 state-jail offenders.

Under Code of Criminal Procedure, art. 42.12, sec. 15(h) those confined in state jails do not earn good conduct time but may be awarded diligent participation credit.

Diligent participation is defined to include active involvement in a work program, successful completion of an educational, vocational, or treatment program, or progress toward successful completion of such a program if the progress was interrupted by illness, injury, or another circumstance

outside of a participant's control.

By the 30th day before defendants have served 80 percent of their sentences, the Texas Department of Criminal Justice (TDCJ) is required to report to the court the number of days an inmate has diligently participated in a program. Judges are authorized to use the report to credit an inmate time for each day the inmate diligently participated in a program. The time credited cannot exceed one-fifth of an inmate's original sentence.

DIGEST:

HB 1586 would change the way credit is awarded to state jail inmates who diligently participate in educational, vocational, treatment, and work programs. Instead of reporting to a court the number of days an inmate diligently participated in the programs, TDCJ would be required to record the information. TDCJ would be required to credit against an inmate's sentence time for each day of diligent participation, and judges no longer would be authorized to make such credits.

The bill would take effect September 1, 2015, and would apply to those confined in a state jail for an offense committed on or after that date.

SUPPORTERS SAY:

HB 1546 would streamline the process for awarding diligent participation credits to state jail felons so that the programs would provide real incentives for inmates to participate in educational, vocational, treatment, and work programs. These programs can reduce recidivism, so the state should do all it can to encourage participation in them.

The current process for awarding diligent participation credits to those participating in programs in state jails is cumbersome, time-consuming and can burden courts. The process begins near the end of an inmate's sentence when TDCJ sends to the court a report on the inmate's participation in the programs. The court then has to receive and process the request, make a decision about awarding credit to the inmate, and return the report to TDCJ.

This process can fail to provide an incentive for inmates to participate in programs. Courts do not respond to the reports in about 56 percent of the cases, so inmates receive no credit, according to TDCJ. In others, the

response comes so late into an inmate's sentence that there is no meaningful reduction of the sentence. This uncertainty can discourage inmates from participating in the programs.

The bill would address these problems by allowing TDCJ to award the diligent participation credits. TDCJ would model the process on the way it awards good time to inmates in prison so that diligent participation credit was awarded as it was earned. This would be fairer to inmates and would give them certainty about the time that would be credited on their sentences and incentives to work hard in the program. As under current law, inmates would not be awarded participation credit for time under disciplinary status, and credits would be awarded only for diligent participation. The state allows TDCJ the discretion to award good time to those in prison, and the awarding of diligent participation credit should follow this model because TDCJ is in a better position than a judge to evaluate an inmate's participation.

The state made the decision in 2011 to allow diligent participation credit for state jail inmates, and the bill would improve the implementation of this policy. Originally, state jails were established without provisions for credits for program participation because those programs were to be used in conjunction with probation. The use of state jails has changed, and they now function more like traditional correctional facilities in which good time is awarded. Encouraging diligent participation in rehabilitative programs improves the effectiveness of state jails even if the number of days served is reduced. Inmates still will serve meaningful sentences because current law limits diligent participation credits to no more than 20 percent of a sentence.

As a result of inmates serving less time in state jails, the state would save money. The bill could have a positive impact of $81.3 million for fiscal 2016-17, according to the fiscal note.

OPPONENTS SAY:

The awarding of diligent participation credits in state jails should continue to be reviewed by the courts rather than awarded administratively as proposed by HB 1546. In about one-quarter of the responses to participation reports that TDCJ has received from courts, judges did not award credit to offenders, and this discretion should continue.

The state jail system was crafted to have short sentences that would be served in their entirety and would involve rehabilitative programs. The average state jail sentence in fiscal 2014 was approximately 10 months, and reducing these sentences by up to one-fifth with no judicial discretion could reduce some punishments too much. As sentences become shorter, there is the risk that the educational, vocational, treatment, and work programs will not be as effective.

NOTES:

According to the fiscal note, HB 1546 would have a positive impact of $81.3 million for fiscal 2016-17 due to the effect it would have in reducing state-jail terms of confinement.

The companion bill, SB 589 by Rodriguez, was placed on the April 13 Senate intent calendar.

SUBJECT: Transferring the emergency medical dispatch resource centers program

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray

0 nays

WITNESSES: For — None

Against — None

On — Steve Shelton, Texas AHEC East, the University of Texas Medical Branch at Galveston; (*Registered, but did not testify*: Kelli Merriweather, Commission on State Emergency Communications)

BACKGROUND: The regional emergency medical dispatch resource centers program was established as a pilot program in SB 523 by Deuell, enacted in 2005 by the 79th Legislature. Health and Safety Code, sec. 771.102 stipulates that the program use emergency medical dispatchers located in regional emergency medical dispatch resource centers to provide life-saving and other emergency medical instructions to people who need guidance while awaiting arrival of emergency medical personnel. The program was established and is overseen by the area health education center at the University of Texas Medical Branch at Galveston (UTMB).

Sec. 771.106 allows money in the 9-1-1 services fee fund, as well as other state funds, to be appropriated to UTMB Galveston on behalf of the center to fund the program. The health center also may seek grant funding for the program, and a political subdivision participating in the program may pay an appropriate share of the program's cost.

DIGEST: HB 479 would transfer the administration of the regional emergency medical dispatch resource centers program from the area health education center at the University of Texas Medical Branch (UTMB) at Galveston to the Commission on State Emergency Communications.

The bill would repeal a section of code that defines "center" in the affected subchapter as the area health education center at UTMB and a section that requires the Commission on State Emergency Communications to provide technical assistance to the center.

The bill would remove the specification in current law allowing money in the 9-1-1 services fee fund to be appropriated to UTMB Galveston on behalf of the health center and instead would allow the appropriation of unspecified state funds to the commission for the program. Administration of the program would be transferred to the commission on the bill's effective date, as would all unspent and unobligated funds appropriated by the Legislature to UTMB Galveston on behalf of the center to fund the program. The commission, with the agreement of the center, could accept the transfer of any records, employees, or property related to the program's operation.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 479 would transfer the administration of the regional emergency medical dispatch resource centers program to a more appropriate state entity. The area health education center at the University of Texas Medical Branch at Galveston acts only as a conduit for the funding to the program and has no other role in operating the center. Transferring the program from the area health education center to the Commission on State Emergency Communications would allow funding to go directly to the program instead of having another state agency channel the appropriated funds.

This bill would allow all current users of the program to continue receiving the same service. Housing the program under the commission simply would enhance the visibility and transparency of the program.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Prohibiting rules against food and drinks in privately owned public pools

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Justin Bragiel, Texas Hotel and Lodging Association; (*Registered, but did not testify*: Kenneth Besserman, Texas Restaurant Association; Homero Lucero, Texas Travel Industry Association)

Against — (*Registered, but did not testify*: Jon Weist, City of Irving)

BACKGROUND: Rules adopted under 25 Texas Administrative Code, Part 1, ch. 265, subch. L, sec. 265.202(a) prohibit a person from eating, drinking, or smoking while in pool or spa water. According to sec. 265.208, a violation of this rule could result in civil or criminal penalties against the violator.

Health and Safety Code, sec. 341.064 provides the statutory authority for rules adopted under 25 Texas Administrative Code, Part 1, ch. 265, subch. L.

DIGEST: HB 2430 would prohibit rules adopted under Health and Safety Code, ch. 341 from forbidding the consumption of food or beverages in a public swimming pool that was privately owned and operated.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 2430 would align state regulations with current practice and protect the rights of private property owners by prohibiting rules that ban eating and drinking at privately owned public pools.

Many establishments such as hotels and resorts operate swim-up bars and currently are violating the rule by providing food and drinks to their

guests while in the pool water. This rule generally has not been enforced, but it could be under current state regulations. If the rule were enforced, many establishments could face civil or criminal penalties. The rule likely has kept new businesses that wish to operate a pool bar or restaurant from opening for fear of legal consequences. The bill would ensure that private property owners were able to control what they serve in their pools without risking civil or criminal penalties.

Regulations prohibiting eating and drinking in privately owned public pools could be amended without legislation, but HB 2430 would send a clear message that this rule must be repealed.

OPPONENTS SAY:

HB 2430 is unnecessary because the rule could be repealed without legislation. The Department of State Health Services could amend or repeal the rule in the same manner that it was adopted under existing statutory authority.

NOTES:

The companion bill, SB 1324 by Menéndez, was approved by the Senate Health and Human Services Committee on April 9 and recommended for the local and uncontested calendar.

SUBJECT: Allowing financial representatives to stop property abandonment process

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas; Carlos Higgins, Texas Silver Haired Legislature; David Rhodes

Against — None

BACKGROUND: Property Code, sec. 72.101 stipulates that personal property is presumed abandoned after three years of inactivity if the existence and whereabouts of the owner are unknown. Under sec. 73.101, bank accounts and safe deposit boxes under the same circumstances are presumed abandoned after five years of inactivity.

According to Property Code, sec. 74.1011, a holder, i.e., a depository, with property valued at more than $250 that is presumed abandoned must mail to the last known address of the property owner written notice that the holder is holding the property, and the holder may be required to deliver the property to the comptroller if the property is not claimed.

DIGEST: CSHB 1454 would allow the owner of a bank account, safe deposit box, or share of a mutual fund to designate a financial representative. The comptroller would have to provide a form for designating a financial representative. The financial representative would not have any rights to the property.

If a bank account, safe deposit box, or mutual fund was presumed to be abandoned and the property holder was unable to reach the owner, the holder would have to notify the financial representative, if one was designated, that the holder could be required to deliver the property to the comptroller if it was not claimed. The abandonment process would cease

immediately if the financial representative was able to communicate the owner's location and that the owner existed and had not abandoned the property.

The holder of property presumed to be abandoned would have to include in the property report the last known mailing or e-mail address of the financial representative, if one was provided. The holder also would have to keep a record of this information.

The bill would take effect January 1, 2016.

SUPPORTERS SAY:

CSHB 1454 would give financial planners more ability to protect the interests of their clients by allowing these representatives to prevent the remittance to the state of property presumed to be abandoned. The current property abandonment procedure can too hastily allow property to be declared abandoned. This increases the risk that owners who have difficulty receiving or understanding notifications could lose property that they had no intention of abandoning.

This risk falls disproportionately on the elderly. Some senior citizens live in remote parts of the state or may not understand the significance of the mail they receive regarding finances. For this reason, many seniors rely on financial planners and other financial representatives to manage their finances.

The bill's committee substitute would change the effective date from September 2015 to January 2016, which would address concerns about the ability of banks and other institutions to comply with the bill's proposed requirements. It also would make clear that designated financial representatives had no rights of access to their clients' accounts, safe deposit boxes, or mutual fund shares. If the owner previously had given the financial representative access to or control of the property, any risk of fraud or abuse was a risk that the owner assumed outside the scope of this bill.

OPPONENTS SAY:

CSHB 1454 could create ambiguity in the form of communication that was required for a financial representative to prevent the abandonment process. Current law requires property owners to communicate in writing

that they have not abandoned the property. The bill would not specify how a financial representative was required to communicate a property owner's intentions.

Under current law, an account from which fees automatically are withdrawn for a financial representative could be presumed abandoned because this would not constitute account activity. This could allow the financial representative of an owner who had passed away to prevent remittance to the state by indicating falsely that the owner had not abandoned the account.

NOTES:

According to the Legislative Budget Board's fiscal note, the fiscal impact of CSHB 1454 cannot be determined at this time because, according to the Comptroller's Office, no data is available upon which to estimate the number and value of accounts that would be affected under the bill. If the bill delayed the remittance to the state of 25 percent of individual accounts and 50 percent of business accounts that otherwise would have been considered abandoned, the Comptroller's Office projects a potential loss to the general revenue fund of $19.8 million in fiscal 2016 and $30.9 million in fiscal 2017.

The committee substitute differs from the bill as introduced in that CSHB 1454 would:

- require the comptroller to create a form for the owner of a mutual fund, bank account, or safe deposit box to designate a financial representative;
- not require a property holder to request a representative for a mutual fund, bank account, or safe deposit box;
- specify that designated financial representatives would have no rights or access to their clients' personal property; and
- change the effective date from September 1, 2015, to January 1, 2016.

SUBJECT: Changing funeral director or embalmer provisional license requirements

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Crownover, Blanco, Coleman, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

3 absent — Naishtat, Collier, S. Davis

WITNESSES: For — Rodney Molitor and Johnnie B. Rogers, Service Corporation International; Kevin Hull, Service Corporation International, Cook-Walden Funeral Home and Cemeteries; Bill Vallie, Texas Funeral Directors Association; (*Registered, but did not testify*: Heather Goad, Bill Haley, and Charles Hauboldt, Texas Funeral Directors Association)

Against — None

On — Janice McCoy, Texas Funeral Service Commission

BACKGROUND: Occupations Code, sec. 651.301 requires a person to obtain a provisional license before learning the practice of funeral directing or embalming under the supervision of a licensed funeral director or embalmer.

Sec. 651.302 requires the Texas Funeral Service Commission (TFSC) to issue a provisional license to practice funeral directing to an applicant who:

- is at least 18 years old;
- has graduated high school or the equivalent or is enrolled in a college of mortuary science;
- is employed by and is under the instruction and supervision of a funeral director; and
- files an application and pays any application or license fee.

Requirements under the same section to issue a provisional license to

practice embalming are similar but do not require employment or personal supervision by an embalmer.

A provisional funeral director or embalmer must serve for at least one year as a provisional license holder under the personal supervision and instruction of a funeral director or embalmer to be eligible to apply for a standard license. The term of a provisional license program cannot exceed 24 consecutive months.

A provisional license holder whose license was canceled by TFSC due to failure to timely pay the renewal fee and associated penalty can apply for reinstatement up to 18 months after the date of cancellation.

DIGEST:

CSHB 1219 would revise the requirements of the funeral director and embalmer provisional license program and the terms for renewing or reinstating a provisional license. The bill also would make several technical and conforming changes to the Occupations Code.

Provisional license program. The bill would require the Texas Funeral Service Commission (TFSC) to waive the requirement that an applicant for a funeral director or embalming provisional license either be enrolled in or a graduate of an accredited school of mortuary science and to issue a provisional license if the applicant was otherwise qualified. The waiver could not exceed 12 months, and the provisional license would expire at the end of the waiver period. An applicant would be required to submit to a criminal background check before submitting an application for a license.

CSHB 1219 would lower the number of cases with which a provisional license holder was required to assist from 60 to 45. The bill would continue to allow provisional license holders to count cases completed for school credit as part of the 45 cases required in the provisional license program. TFSC would be required to prescribe by rule case reporting requirements and to provide the case report forms for provisional license holders.

When conducting funeral arrangements, provisional license holders would be required to disclose to family members and other people involved in

the funeral arrangements that the license holder had a provisional license and worked under the personal supervision of a licensed funeral director.

During the provisional license term, a provisional license holder would be required to work at a funeral establishment or commercial embalming facility licensed by TFSC and under the direct and personal supervision of a funeral director or embalmer. If this requirement was not met, TFSC would cancel the provisional license.

After completing the provisional license program, applicants would be eligible for a standard license if they also met other existing requirements. A provisional license holder who is otherwise eligible for a standard license and who has completed the provisional license program would be able to receive a license regardless of the provisional license's expiration date.

License renewal or reinstatement. A provisional license would be valid for 12 consecutive months and could be renewed once for no longer than an additional 12 months. TFSC would be required to cancel a provisional license if the provisional license holder failed to complete the program within 24 consecutive months. If TFSC waived the provisional license education requirements for any period of time, the provisional license holder would be allowed to renew the license for no more than 24 months and would have to complete the provisional license program within 36 consecutive months.

The bill would allow a provisional license holder who did not complete the program within the prescribed period to reapply for a provisional license. This reapplication could be done only once. The provisional license holder would have to comply with the same requirements as the original application. Cases performed under a previous provisional license program could not count towards the new provisional license program, but TFSC could adopt rules that would allow for an exception if the provisional license holder requested a hardship exemption.

CSHB 1219 would allow a provisional license holder whose provisional license was canceled by TFSC for failure to renew the license and pay the associated penalty to apply for reinstatement. The applicant would have to

reapply by the date the license would have expired if it had been renewed. This also would be the expiration date of the reinstated provisional license. A provisional license holder would not be allowed to work as a funeral director or embalmer while the license was suspended or canceled.

Technical and conforming changes. The bill would amend language throughout Occupations Code, ch. 651 to conform it with provisions in CSHB 1219. It would use the terms "funeral establishment" and "commercial embalming facility" in some places to distinguish between the business and the person in charge, who would continue to be called a "funeral director" or "embalmer." It also would repeal certain sections of the Occupations Code to conform with other changes resulting from the bill.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1219 would bring more people into the funeral directing and embalming industry by making provisional licenses more accessible. The bill also would allow individuals to gain valuable experience in the industry before committing to a formal education in mortuary studies.

There is a statewide shortage of professionals in this industry, particularly in rural areas. One reason for this shortage is that people currently entering the profession have education in the industry but little or no practical experience. They become overwhelmed by the job and often leave to pursue a different profession. Funeral directing and embalming is a difficult profession that is not only taxing on a person's mental health but also is demanding of time. The bill would allow potential funeral directors and embalmers to get firsthand experience in the industry before having to enroll in and pay for school.

The bill would return licensing standards to what they were two decades ago. Under those laws, individuals were able to work in the industry before having to attend mortuary school. Returning to those standards would not result in more problems or rule violations because during that time, funeral directors and embalmers supervised the apprentices just as this bill would require. TFSC enforced the supervision requirements and penalized any violators just as it would under this bill.

OPPONENTS SAY:

CSHB 1219 would allow individuals to circumvent licensing requirements by not requiring them to finish or enroll in school before practicing funeral directing or embalming. This would place a larger burden on TFSC because it is in charge of protecting the public by regulating funeral homes and enforcing rules. With the increase in provisional license holders practicing funeral directing or embalming, the number of rule violations could increase.

NOTES:

CSHB 1219 differs from the bill as filed in that the substitute would:

- require, rather than allow, TFSC to waive the educational requirements related to granting a provisional license;
- allow a provisional license holder to receive a standard license once all requirements were met, regardless of the provisional license's expiration date;
- lower the minimum number of cases required in the provisional license program from 60 to 45;
- allow a case that was completed for school credit also to be counted towards the 45 case provisional license program requirement; and
- require a provisional license holder to inform the family that they hold a provisional license and are working under the supervision of a licensed funeral director or embalmer.

The companion bill, SB 1031 by Watson, was referred to the Senate Committee on Business and Commerce on March 11.

SUBJECT: Expressly preempting certain local oil and gas regulations

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 10 ayes — Darby, Paddie, Canales, Craddick, Dale, Keffer, P. King, Landgraf, Meyer, Riddle

1 nay — Anchia

1 absent — Herrero

1 present not voting — Wu

WITNESSES: For — Frank Macchiarola, America's Natural Gas Alliance; Don Tymrak, City of Karnes City; Ed Smith, City of Marshall; Jeanette Winn, Karnes City ISD; J. Ross Lacy, Midland City Council; Candice Brewer, National Association of Royalty Owners; Ben Shepperd, Permian Basin Petroleum Association; Josiah Neeley, R Street Institute; Bill Stevens, Texas Alliance of Energy Producers; Carlton Schwab, Texas Economic Development Council; Ed Longanecker and Raymond Welder, Texas Independent Producers and Royalty Owners; Todd Staples, Texas Oil and Gas Association; Jess Fields and Leigh Thompson, Texas Public Policy Foundation; Tricia Davis and Kent Sullivan, Texas Royalty Council; and 10 individuals; (*Registered, but did not testify*: John Fainter, Association of Electric Companies of Texas; Nelson Nease, America's Natural Gas Alliance; Peggy Venable, Americans for Prosperity-Texas; Adrian Acevedo, Anadarko Petroleum Corp; Matthew Thompson, Apache Corporation; Dan Hinkle, Association of Energy Service Companies, BP, EOG Resources, EP Energy, EnerVest; Charles Yarbrough, Atmos Energy; Robert Flores, Breitling Energy; Jeff Bonham, CenterPoint Energy, Inc.; Christie Goodman, Richard Lawson, Ben Sebree, Julie Williams, and Steve Perry, Chevron; Stan Casey, Concho Resources Inc.; JD Adkins, ConocoPhillips; Martin Allday, Consumer Energy Alliance-Texas, Enbridge Energy; Shayne Woodard, DCP Midstream; Teddy Carter, Devon Energy; Grant Ruckel, Energy Transfer; Marida Favia del Core Borromeo, Exotic Wildlife Association; Samantha Omey, ExxonMobil; Kelly McBeth, Gas Processors Association; Royce Poinsett,

Halliburton; Bill Oswald, Koch Companies; Chris Hosek, BASA Resources, Exco Resources, Linn Energy, Newfield Exploration, QEP Resources, R360, Range Resources, Select Energy, SM Energy; Hugo Gutierrez, Marathon Oil Corporation; Amy Maxwell, Marathon Oil Corporation; Lindsay Sander, Markwest Energy; Julie Moore, Occidental Petroleum Corporation; Anne Billingsley, ONEOK; David Holt, Permian Basin Petroleum Association; Mark Gipson, Pioneer Natural Resources; Kinnan Golemon, Shell Oil Company; Patty Errico and Cade Campbell, SM Energy; Jim Tramuto, Southwestern Energy Company; Stephanie Simpson, Texas Association of Manufacturers; Steven Garza and Daniel Gonzalez, Texas Association of Realtors; Stephen Minick, Texas Association of Business; Hector Rivero, Texas Chemical Council; Lisa Kaufman, Texas Civil Justice League; Laura Buchanan, Texas Land & Mineral Owners Association; Thure Cannon, Texas Pipeline Association; Julie Klumpyan, Valero; Jim Rudd, West Texas Gas; Greg Macksood)

Against — Don Crowson and James Parajon, City of Arlington; Nelda Martinez, City of Corpus Christi and Texas Municipal League; Philip Kingston, City of Dallas; Chris Watts, City of Denton; Sarah Fullenwider, Jungus Jordan, and Danny Scarth, City of Fort Worth; Don Postell, City of Grand Prairie; Clayton Chandler, Bill Lane, and Peter Phillis, City of Mansfield; Bryn Meredith, City of Mansfield, City of Southlake, City of Flower Mound; Ken Baker, City of Southlake; Adam Briggle and Cathy McMullen, Denton Drilling Awareness Group; Sharon Wilson, Earthworks; Luke Metzger, Environment Texas; Scott Anderson, Environmental Defense Fund; Calvin Tillman, League of Independent Voters of Texas; Susybelle Gosslee, League of Women Voters of Texas; Lon Burnam, Public Citizen; Elizabeth Riebschlaeger, Sisters of Charity of the Incarnate Word of San Antonio; Robin Schneider and Zac Trahan, Texas Campaign for the Environment; Bennett Sandlin, Texas Municipal League; David M. Smith, Texas Neighborhoods Together; Snapper Carr, Texas Coalition of Cities for Utility Issues; and 18 individuals; (*Registered, but did not testify*: David Crow, Arlington Professional Fire Fighters; Jesus Garcia, City of Alice; Jennifer Rodriguez, City of College Station; Tom Tagliabue, City of Corpus Christi; Brie Franco, City of El Paso; Lindsay Lanagan, City of Houston; Jon Weist, City of Irving; Sam Fugate, City of Kingsville; Frank Sturzl, City of North Richland Hills; David Foster, Clean Water Action; Ellen Friedman, CommonSpark; Doug

Dickerson, Dallas Fire Fighters Association; Shelby Dupnik, Karnes County; Linda Curtis, League of Independent Voters of Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Jill Hinckley, National Nurses United; Jon Andreyo, Andrew Dobbs, and Anne Robertson, Texas Campaign for the Environment; Chance Sparks, American Planning Association-Texas Chapter; David Weinberg, Texas League of Conservation Voters; Shanna Igo, Texas Municipal League; Julian Muñoz Villarreal, Texas Neighborhoods Together; Paula Littles, Texas National Nurses Organizing Committee; Trish O'Day, Texas Physicians for Social Responsibility; Ric Holmes, Texas Municipal League Region 9; William Sciscoe, Town of DISH; Conrad John, Travis County Commissioners Court; Gwendolyn Agbatekwe, Texas National Nurses Organizing Committee, National Nurses United; and 42 individuals)

On — Alan Day, Brazos Valley Groundwater Conservation District; Steve Lindsey, City of Mansfield; Jim Allison, County Judges and Commissioners Association of Texas; Jon Olson, Department of Petroleum & Geosystems Engineering at the University of Texas at Austin; C.E. Williams, Panhandle Groundwater Conservation District; John Love, Texas Municipal League, City of Midland; (*Registered, but did not testify*: Diane Goss and Keith Sheedy, Texas Commission on Environmental Quality)

BACKGROUND: Land ownership in Texas is divided into two estates: the surface estate and the mineral estate. It is common for the mineral estate and the surface estate to be owned by different people or entities. Current interpretation of Texas law provides that the owner of a mineral estate has certain rights to surface use, including, but not limited to, constructing roads, pipelines, wells, storage tanks, and canals.

DIGEST: **Definitions.** CSHB 40 would define "commercially reasonable" as "a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas." The bill would specify that this would be determined based on the objective standard of a reasonably prudent operator and not an individualized assessment of an actual operator's capacity to act.

The bill would define “oil and gas operation” as “an activity associated with the exploration, development, production, processing, and transportation of oil and gas." The bill would specifically include "hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities" in this definition.

Preemption. This bill expressly would preempt ordinances and regulations enacted by a political subdivision of the state that ban, limit, or otherwise regulate an oil and gas operation, unless the regulation:

- regulated only aboveground activity;
- was “commercially reasonable”;
- did not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
- was not otherwise preempted by state or federal law.

An ordinance would be considered commercially reasonable if it had been in effect for at least five years and had allowed the oil and gas operations at issue to continue during that period.

The preamble to the bill includes a statement noting that the regulation of oil and gas operations by municipalities and other political subdivisions is “impliedly preempted” by statutes already in effect.

CSHB 40 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 40 would affirm the preemptive nature of state regulations on oil and gas production over local ordinances and would ensure consistent, fair application of rules across the state. It would create a clear four-prong test for preemption that would both reduce litigation and ensure that owners of mineral estates were not effectively stripped of their property rights.

State vs. local regulation. The state historically has been responsible for the majority of oil and gas regulations. State agencies, therefore, are the most experienced regulatory bodies and have highly specialized

subdivisions equipped to handle highly specialized issues. Local governments have less expertise and less of an ability to draft regulations that reflect engineering reality.

Additionally, this bill would incentivize cooperation and agreements between municipalities and operators because municipalities no longer would be able to regulate without considering the property rights of mineral owners. This would create a better balance between property rights and reasonable restrictions on oil and gas operations than is achieved by the current patchwork of municipal regulations.

Some opponents suggest that the distance between affected individuals and state agencies will cause state regulators to be less responsive to concerns than municipal regulators. However, this is not unique to state agencies. Municipalities can be heavily influenced by operators, even more so if the municipality is small and the operator is influential. The state agency is in a better position to understand the effects of any given oil and gas operation than is a municipality.

Concerns that state agency subsurface regulations are insufficient and lack enforcement do not justify turning to a patchwork set of municipal ordinances. Instead, the Legislature should fully fund the Railroad Commission and focus on improving state policies and regulations instead of offloading that task to municipalities.

This bill would not impede performance of statutory obligations because there are few (if any) statutory obligations that would implicitly require municipal regulation of oil and gas operations. The bill is also unlikely to affect many local ordinances that are not related to oil and gas operations like fire codes and traffic ordinances because these regulations likely would pass the four-prong test.

The ordinances that would be preempted by this bill are predominantly duplicative with state agency regulations, so this bill would not harm public health or public safety.

Property rights. Mineral rights are just as important to protect as surface rights, but municipal regulations that effectively ban attempts to exploit

resources deprive mineral rights owners of their property. This bill is needed to protect property rights and the dominance of the mineral estate as it has been recognized by Texas law for centuries.

Current protections against uncompensated regulatory takings are not sufficient, and litigation currently in progress could result in the erosion of property rights due to this deficiency. This bill unambiguously would secure the right of mineral rights owners to access and exploit their property.

Any impact that oil and gas operations have on property values is both temporary (drilling rigs are only operational for less than 30 days) and mitigated by aboveground regulations such as setbacks, fencing, and landscaping requirements (which would pass the four-prong test). In fact, the data is ambiguous as to whether there is any negative, long-term impact on property values for land near oil and gas wells.

Regulatory certainty. By creating a simple and straightforward test for preemption, this bill would reduce the need for litigation to determine whether or not an ordinance was preempted. Operators choose not to commence operations in certain circumstances where regulatory uncertainty risks eventually shutting down a prospective drilling operation entirely, so this bill would increase the number of oil and gas operations and thus increase economic activity in the state, boosting tax revenues.

Additionally, if municipalities and political subdivisions continued to be allowed to regulate subsurface activity, an operator that horizontally drilled across multiple jurisdictions could be subject to multiple sets of potentially contradictory regulations. This bill would resolve this otherwise intractable quagmire of regulation.

The Railroad Commission already has 15 separate districts to accommodate local concerns with region-specific approaches, and a patchwork approach to regulation in different parts of the state would be inappropriate.

Preamble. This is a statement of intent by the Legislature, and it is the Legislature’s belief that current law does impliedly preempt the regulation

of oil and gas operations by municipalities and other political subdivisions.

Scope. The term "reasonably prudent operator" is well established and clearly understood by litigators and the industry. The fact that it originated from another area of law is inconsequential. "Political subdivision" is also a frequently used term throughout statute and by litigators, and it is not unclear or ambiguous.

Likewise, the possibility that the phrase "an oil and gas operation" could lead to an overly broad effect on ordinances would be limited by the reasonably prudent operator standard. For instance, an operator could not argue that it should be allowed to drill in the middle of Main Street for any number of reasons, but primarily because a reasonably prudent operator would not locate a well site in the middle of a major road. This bill would not effectively eliminate all aboveground ordinances.

CSHB 40 effectively would balance the property rights of mineral owners with public safety by clarifying that the most effective entity would have purview to regulate.

OPPONENTS SAY:

CSHB 40 is overly optimistic about the efficacy of state regulation and is overbroad, effectively prohibiting even basic ordinances intended to ensure public safety and public health. The bill would upend the balance between protecting property rights and environmental protection in favor of the oil and gas industry, disregarding legitimate public health concerns brought by affected individuals.

State vs. local regulation. Effects of oil and gas operations are necessarily felt most acutely at the local level. Although state agencies may have more expertise surrounding oil and gas operations, municipalities are better equipped to understand the effects of the operations on their communities and would be under more pressure to respond to local resident concerns. This bill would remove much of the power the average individual has to influence regulatory changes on oil and gas operations and place more power into the hands of organized interest groups such as the oil and gas industry.

State agencies may not have political will to enforce the regulations necessary to protect public health and the environment. Municipalities are more accessible and responsive to individual complaints than a state agency, which can be beholden to industry interests and disconnected from the citizenry. It would be a mistake to rely only on state agencies. Municipal regulations are necessary only because state regulation is perceived to be inadequate.

Even if state agencies adequately enforced existing regulations, gaps in state subsurface rules and regulations currently are filled by local ordinances. None would remain in effect because each would fail one of the four prongs of the test in this bill. A few examples of local ordinances that could be preempted include those requiring operators to bury saltwater pipelines at sufficient depth to protect city infrastructure, that thumper trucks rather than explosives be used to conduct seismic surveys, and that pipelines crossing roads be bored or tunneled to prevent damage.

In Texas, state regulations on oil and gas operations are notoriously weak. Fines for certain violations, for instance, are 30 years old, have not kept up with inflation, and are no longer adequate disincentives. Leak detection and repair programs, the standard in other states, are not required of the oil and gas industry. The state should not categorically preempt municipal regulations without first ensuring state regulations are actually complete.

Municipalities might have certain statutory obligations that could not be performed without limiting subsurface activity. As the bill is currently written, it is not clear what would happen if a regulation necessary to fulfill a statutory obligation violated one of the four prongs of the test.

Ordinances preempted by this bill would not be specific to oil and gas operations — they could be part of the fire code or traffic or explosives ordinances, for example. Reasonable ordinances could be preempted if they somehow were construed to limit commercially reasonable oil and gas operations.

Property rights. Property rights should be protected, but current law is sufficient. Regulatory takings are not inherently bad when the regulation protects a public interest and property owners are compensated.

Regulations that serve as effective bans on resource extraction would likely be ruled inverse condemnations under current law and mineral owners given compensation for the regulatory taking.

An erosion in property rights is worthwhile if municipal regulations are needed to protect neighborhoods from environmental degradation and harmful public health consequences. Municipalities should be able to enact regulations to save lives even if it effectively prohibits an oil and gas operation by making it uneconomical.

Oil and gas operations infringe upon the property rights of surface owners near the mineral rights by reducing their property values. The traffic, noise, light and air pollution, and general unsightliness drives down property values, particularly if the operation is in a residential area. Homeowners should be free from such nuisances, and this bill would eliminate tools municipalities have to reduce the negative impact of oil and gas operations.

Regulatory certainty. A certain level of variation is necessary in regulations due to operational environments differing throughout the state. This bill would create a flat set of regulations that ignore the need for some local subsurface regulations. For instance, coastal areas subject to hurricane activity require subsurface shut-off valves that can be activated to prevent catastrophic oil spills. In other cases where the municipality holds some subsurface rights, the municipality requires the operator to hold insurance to pay for any potential damage to the municipality's subsurface rights. This bill could preempt these regulations and expose the regions to safety or fiscal risks.

Preamble. The preamble in this bill is not merely a statement of intent but could significantly change the outcome of litigation. Courts have routinely held that local regulations on oil and gas operations are not currently "impliedly preempted."

Scope. The bill includes ambiguous terms that could create litigation and potentially expand an already broad provision such that courts would have to decide what the terms meant in their new context. The term "reasonably prudent operator," similar to the reasonable person standard, is common in

tort law but not municipal law or preemption law. Stripped of its context in tort law, the reasonably prudent operator standard becomes ambiguous even though it is commonly used. The bill should clarify that the standard involves a certain level of due regard to surface rights.

With the term "political subdivision," it is not immediately clear if the bill would preempt important groundwater conservation district regulations for spacing, water withdrawal, and reporting by oil and gas operators.

A third term that could increase the scope of the bill is "an oil and gas operation." As currently worded, the bill could invalidate even ordinances regulating only aboveground activity. For instance, setbacks prohibit an oil and gas operation within a certain distance around a building. A setback ordinance could fail the third prong since it effectively (or, in this case, actually) "prohibits an oil and gas operation" within that distance from the building. Under this reading, virtually all ordinances could be preempted, even those meeting the other prongs of the test.

This phrase makes the bill less about ensuring property rights and more about oil and gas operations being able to drill anywhere. The bill should use verbiage not about oil and gas operations but about whether or not an operator can actually access leased minerals.

If municipalities exceed their authority under current law, the situation should be resolved by the courts on a case-by-case basis. This bill would be an overreach, endangering environmental quality and public health.

NOTES:

The Legislative Budget Board's fiscal note indicates that there could be an indeterminate fiscal impact to the state, depending on the number of political subdivisions affected by the bill.

The committee substitute differs from the introduced version in that CSHB 40 would include in the basis of determining a "commercially reasonable" measure the objective standard of a reasonably prudent operator and not an individualized assessment of a specific operator's capacity to act.

CSHB 40 specifies that political subdivisions could impose regulations on

aboveground activities under certain circumstances.

CSHB 40 also differs from the original bill in providing that an ordinance would be considered commercially reasonable if the ordinance had been in effect for at least five years and had allowed the oil and gas operation at issue to continue during that period.

The Senate companion, SB 1165 by Fraser, et al., was reported favorably by the Senate Natural Resources and Economic Development Committee on March 25.

SUBJECT: Open carry for concealed handgun license holders

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Phillips, Burns, Dale, Metcalf, Moody, M. White, Wray

2 nays — Nevárez, Johnson

WITNESSES: For — Tara Mica, National Rifle Association; Richard Briscoe, CJ Grisham, and Christopher Martin, Open Carry Texas; Amy Clark, Republican Party of Texas; Tov Henderson, Terry Holcomb, Texas Carry; Alice Tripp, Texas State Rifle Association; Richard Morgan, Texas Young Republican Federation; and 17 individuals; (*Registered, but did not testify*: Cara Bonin, Katy Libertea, Katy Tea Party, Katy NORML; Charles (Chuck) Ballweg and Paul Frueh, North Texas Citizens Lobby; Gina Holcomb, Texas Carry; AJ Louderback, Sheriffs' Association of Texas; Matthew Walbeck, State Republican Executive Committee; Aaron Mitchell, Texas A&M Student Senate; Cathy Dewitt, Texas Association of Business; MerryLynns Gerstenschlager, Texas Eagle Forum; and 10 individuals)

Against — Troy Gay, Austin Police Department; Donald McKinney, Houston Police Department; Grace Chimene, League of Women Voters of Texas; Alexandra Chasse, Norri Leder, Angela Turner, and Nobie White, Moms Demand Action for Gun Sense in America; Ted Melina Raab, Texas American Federation of Teachers; Frances Schenkkan, Texas Gun Sense; Kristen Katz, The Campaign to Keep Guns Off Campus; and five individuals; (*Registered, but did not testify*: Margie Medrano, Jamie Ford, Anna Kehde, Rosalie Oliveri, Donna Schmidt, Bonnie Tompsett, Kelly Tagle, Susan Pintchovski, Nicole Golden, and Richard Martine, Moms Demand Action for Gun Sense in America; Andrea Brauer, Anne Musial, Jonathan Panzer, and Kimberly Taylor, Texas Gun Sense; and eight individuals)

On — Pablo Frias, "We The People"; Justin Delosh, Lone Star Gun Rights; William Brown, Republic of Texas TV; Jeremy Blosser, Tarrant

County Republican Party; Rachel Malone, Texas Firearms Freedom; Jacob Cordova; and five individuals; (*Registered, but did not testify*: Sherrie Zgabay, Texas Department of Public Safety; Joshua Houston, Texas Impact; Wade Olson)

BACKGROUND:

Government Code, ch. 411, subch. H establishes the eligibility requirements for concealed handgun licenses. The requirements include:

- being a legal resident of Texas or otherwise eligible for a nonresident license;
- being at least 21 years old unless the person is an honorably discharged member of the military who meets all other requirements;
- generally not having been convicted of or charged with criminal activity;
- being capable of exercising sound judgment for handgun use and storage and passing a mental health check;
- submitting fingerprints, paying a license fee, and passing a criminal history background check; and
- showing evidence of handgun use proficiency.

DIGEST:

Concealed carry to open carry. CSHB 910 would expand the scope of a concealed handgun license to authorize an individual possessing the license to carry a handgun, whether or not it was concealed. The license holder would be entitled to carry a handgun in plain view in a public place if the handgun was carried in a shoulder or belt holster.

It also would make most statutory provisions that regulate concealed handgun license holders and carrying a concealed handgun apply to carrying a handgun, whether or not it was concealed. Conforming changes would amend the Alcoholic Beverage Code, Government Code, Penal Code, Code of Criminal Procedure, Education Code, Election Code, Family Code, Health and Safety Code, Labor Code, Local Government Code, Occupations Code, and Parks and Wildlife Code.

Trespass by license holder. The bill would add Penal Code, sec. 30.07 to establish a new offense that would parallel the current offense of trespass

by a concealed handgun license holder (Penal Code, sec. 30.06). The new offense would cover trespassing with an openly carried handgun if a license holder entered another's property without effective consent and:

- had notice that the entry was forbidden; or
- received notice that remaining on the property was forbidden and failed to depart.

A license holder would receive notice if an owner or someone with apparent authority to act on the owner's behalf provided notice by oral or written communication. A written communication would be defined as a card or document with language required by Penal Code, sec. 30.07 or a sign posted on the property. The sign would be required to:

- include Penal Code, sec. 30.07 language in both English and Spanish;
- have contrasting colors with block letters at least one inch in height; and
- be conspicuously displayed and clearly visible at each entrance to the property.

The bill also would create an exception to the trespass offense if the property was owned or leased by a governmental entity and was not a place where license holders were prohibited from carrying guns.

The bill would not allow a defense to prosecution for carrying the handgun in a shoulder or belt holster. An offense under this section would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Unlawful carrying by a license holder. The bill would prohibit a licensed holder from openly carrying and intentionally displaying a handgun on the premises of an institution of higher education, including any public or private driveway, street, sidewalk or walkway, or parking area. Such offense would be a class A misdemeanor. It would be a defense to prosecution if the actor brought the handgun in plain view under circumstances in which the actor would have been justified in the use of force or deadly force.

The bill would extend to open carry the current law on places where license holders cannot carry handguns.

Criminal trespass. The bill would extend the defense to prosecution for the current criminal trespass offense that deals with concealed carry to include open carry.

Personal protection officers. The bill would specify that an individual acting as a personal protection officer who was not wearing a security officer's uniform would have to conceal any firearm the protection officer was carrying, regardless of whether the person was authorized to openly carry the firearm under any other law.

Unlawful carrying of weapons. The bill would permit the carrying of handguns in plain view in a motor vehicle or watercraft owned by the person if the person was licensed to carry a handgun and the handgun was carried in a shoulder or belt holster.

License instruction. The bill would require instructors to include instruction on the use of restraint holsters and methods of securely carrying a handgun openly in the handgun proficiency course that is required to receive a license to carry a handgun.

Repealing concealed handgun definition. The bill would repeal Government Code, sec. 411.171(3), which defines a concealed handgun.

Application. The changes in the bill would apply to the carrying of a handgun on or after the effective date of the bill by any person who holds a license to carry a concealed handgun or any person who applies for a license, regardless of whether the license was issued or the application was made before, on, or after the effective date of the bill.

The penalties created in the bill would only apply to an offense committed on or after the effective date of the bill.

Conforming changes to language in Local Government Code, sec. 118.011(b) regarding a county fee for a mental health background check required for a license to carry would take effect September 1, 2015.

Otherwise, the bill would take effect January 1, 2016.

SUPPORTERS SAY:

CSHB 910 would protect law-abiding Texans' Second Amendment rights under the U.S. Constitution by allowing them to openly carry handguns. Texas' prohibition on open carry, even for individuals who have received training and are licensed to carry concealed handguns, is an unreasonable restriction of those constitutional rights. This bill simply would extend existing requirements for licensed concealed carry of handguns to open carrying.

Forty-four U.S. states already allow open carry of handguns, and this bill would bring Texas in line with the majority of the country. Many of the same safety concerns raised about open carry also were raised about concealed carry before it was enacted in Texas in 1995, and those worries have proved unfounded, as have concerns about open carry in other states.

Allowing licensed individuals to openly carry handguns under the bill would not pose a danger to the community. The background check and licensing process to obtain a handgun license is extremely thorough and prevents people who have committed serious crimes from acquiring licenses. Moreover, concealed handgun license holders are much less likely than civilians who do not hold the license to commit a crime. The Texas Department of Public Safety reported in 2013 that less than half of 1 percent of total criminal convictions were of concealed handgun license holders. If a handgun license holder who was openly carrying did commit a crime, existing laws would be enforced against that individual, as this bill would not change those laws.

Far from creating a public safety risk, this bill might in fact help reduce criminal activity. Crime rates have dropped significantly since the establishment of the concealed handgun licensing system in Texas, and other states also have seen a drop in crime after enacting similar licensing laws. After a handgun licensing system was instituted in Illinois, the crime rate dropped to its lowest rate in more than 50 years. Oklahoma instituted open carry laws in 2012, and in 2013 the state showed a drop in overall crime, a 7.3 percent drop in violent crimes, and a significant drop in the number of murders committed.

The presence of well-trained civilians visibly carrying handguns on their person could provide a valuable deterrent to would-be criminals. By openly carrying a weapon, civilians who found themselves targeted by criminals would have faster, easier access to their weapons to defend themselves than would a person with a concealed handgun. In addition, the bill's requirements that a person use a shoulder or belt holster would help ensure that the handgun was secured to the person's body.

While police officers might receive some emergency calls involving people openly carrying handguns, other states with open carry have not found the number of these calls to be overly burdensome on law enforcement. In practice, most licensed handgun owners in other states have preferred to keep their weapons concealed, which likely would be the case in Texas as well. Because a majority of people would not carry openly, there would not be an increased burden on officers to check licenses of those openly carrying.

The bill would not infringe on personal property rights because individuals and businesses still would have the right to prohibit handguns on their property by posting the proper notice. The requirement to display more than one sign would not be overly burdensome for business owners.

The bill would not remove a licensed individual's right to carry a concealed handgun or allow a larger number of people to be able to carry guns, but merely would give license holders an option to open carry. Any individual who wanted to openly carry a handgun under the bill still would need to fulfill all requirements to obtain a license to carry a handgun, which would ensure that the individual was properly trained. This bill would not change the way reciprocity is granted. The governor and attorney general still would be required to make a finding that another state's laws met the eligibility requirements of Texas statutes for carrying a handgun.

OPPONENTS SAY:

The changes proposed in CSHB 910 are unnecessary and inappropriate because nothing is wrong with the current concealed handgun system in Texas, and the bill would not address any real safety concerns. In a February 2015 survey conducted by the University of Texas at Austin and the Texas Tribune, only 22 percent of respondents believed Texans with

handgun licenses should be allowed to open carry. There is no evidence open carry would deter crime or reduce violence, and openly carrying handguns could create an environment of fear, intimidation, and unnecessary provocation.

Although many states have open carry laws, the states that do not are some of the largest, including California, Florida, and New York. Additionally, many states' open carry laws have more stringent requirements than would be enacted through this bill. For example, North Dakota requires open carried guns to be unloaded.

There is no evidence that open carry has been the cause of reduced crime rates in other states. In fact, individuals who openly carry their weapons could be at greater risk of being harmed by their own guns due to theft. Highly trained police officers who openly carry handguns have lost their lives after being attacked with their own guns by criminals.

The bill also would place additional burdens on police officers. In a February 2015 survey of 192 police chiefs conducted by the Texas Police Chiefs Association, about 74 percent opposed open carry. When police officers respond to an emergency call involving handguns, the presence of many people carrying openly could cause confusion and divert police attention away from the criminals. Police officers might not immediately be able to distinguish the law-abiding civilians from the criminals in an emergency, which could lead to a greater risk of harming innocent people. Law enforcement personnel responding to emergency calls also might have to spend valuable time and manpower checking the licenses of people who were openly carrying handguns.

Private property owners should have the right to make decisions about whether to allow open carrying of handguns on their property without being burdened by additional requirements. The bill would make notice requirements onerous by requiring a business to display separate signs prohibiting concealed and openly carried weapons. This especially would impact smaller businesses.

CSHB 910 would not include enough requirements for new training and education for handgun license holders. Currently licensed individuals

suddenly would have many new rights under the bill, and they would need additional training on the new information. According to the survey of police chiefs in February, about 76 percent believed that a person carrying a handgun should receive retention training.

The bill could allow individuals from other states to openly carry handguns in Texas under a separate reciprocity agreement. Many other states do not have the same strict licensing requirements the state of Texas mandates, and no additional training for the nonresidents would be required under the bill.

At the very least, the bill should be amended to restrict open carry to rural areas only. Open carry in rural areas would pose less of a threat to public safety, while open carrying of handguns in highly populated urban areas could cause unnecessary alarm and confusion in chaotic situations.

OTHER OPPONENTS SAY:

CSHB 910 would not go far enough in protecting the freedom of Texans to openly carry a weapon as they chose. Individuals with licenses to carry handguns should be able to choose whether to carry their gun in a holster. Holsters can be costly, and the bill should not require that they be used.

This bill inappropriately would restrict the rights Texans have under the U.S. Constitution to carry handguns. The requirements of obtaining a license and taking a class to be able to openly carry a handgun would infringe upon the Second Amendment right to bear arms. Individuals should not have to obtain a license as required by the bill to carry a handgun. Thirty-one states already allow open carrying of handguns without a permit.

NOTES:

CSHB 910 differs from the original bill in that it would:

- add requirements to the Government Code for additional instruction by qualified handgun instructors on use of restraint holsters and methods to ensure safe open carrying;
- add a class A misdemeanor offense for a person openly carrying and intentionally displaying a handgun in plain view on the premises of an institution of higher education, or on a driveway, street, sidewalk, or parking area of an institution of higher

education;

- preserve and extend a defense to prosecution when the use of deadly force is justified;
- preserve the exemption provided under current law on openly carrying a handgun for certain historical reenactments;
- add a reference to definitions for an institution of higher education and private or independent institution of higher education; and
- extend the general effective date to January 1, 2016.

Unlike HB 910 as introduced, the committee substitute removed language that would have changed current law to require a school district's board of trustees to adopt regulations allowing a school marshal to openly carry a handgun.

A companion bill, SB 17 by Estes, was approved by the Senate on March 17. Another companion, SB 346 by Estes, was referred to the Senate State Affairs Committee on February 2.

SUBJECT: Exempting Texas State University from buying insurance through SORM

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — None

Against — None

On — Stephen Vollbrecht, State Office of Risk Management; Brian McCall, The Texas State University System

BACKGROUND: The State Office of Risk Management (SORM) was established by the Legislature and is directed by Labor Code, ch. 412 to provide risk management and insurance services to certain state entities and to provide workers' compensation benefits to injured state employees. State law requires state entities, with the exception of the University of Texas System, the Texas A&M University System, the Texas Tech University System, and the Texas Department of Transportation to purchase certain lines of insurance through SORM.

Under 28 Texas Administrative Code, part 4, subch. C, sec. 252.303(d), SORM must grant an exception to the requirement that it procure insurance policies and allow state entities to purchase insurance policies outside the SORM program if it finds that an agency has unique exposures, that the purchase is necessary because of substantial or unusual risk of loss, or that the coverage is necessary to protect the interests of the state.

In November 2013, SORM asked the Texas attorney general for an

opinion on whether state agencies and institutions of higher education are permitted to purchase property insurance without the approval of SORM. In a May 2014 opinion (GA-1061), the attorney general said state agencies except those excluded by statute, must have SORM approval to purchase property, casualty, or liability insurance.

DIGEST:

CSHB 796 would remove the Texas State University System and component institutions from requirements in Labor Code, sec. 412.011 that they obtain risk management services and certain lines of insurance, including property and liability insurance, through the State Office of Risk Management (SORM).

The bill would require the Texas State University System and its component institutions to perform risk management services related to insurance coverage purchased by the system or institution without approval from the SORM board.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 796 appropriately would allow the Texas State University System and its board of regents to make decisions regarding property insurance, which would result in better, cost-effective coverage. The system already has saved about $1 million annually by purchasing its own insurance through a competitive bidding process instead of through the SORM risk pool. These savings help the system reduce operating expenses and avoid higher tuition rates. At a time when the state is asking public universities to operate more efficiently, the Legislature should not restrict the system's access to the private insurance market, which has demonstrated its ability to offer a similar – if not better – product at a lower price.

A number of other university systems, including the University of Texas System, the Texas A&M University System, and the Texas Tech University System, are not required to purchase property insurance through SORM. This bill would give the Texas State University System the same opportunity to find the insurance coverage that best suits its institutions.

The system has demonstrated that insurance coverage can be obtained outside the SORM program for better coverage at a lower price. After being presented with a $1.2 million premium increase for property insurance through SORM for the 2012-13 year, the system informed SORM it would seek alternative coverage options in the future. The system subsequently secured a bid that was $1.1 million less than the pricing of SORM's preferred broker. SORM denied the system's request to purchase property insurance outside of SORM and threatened legal action if the system purchased its own insurance. SORM sought an opinion from the Texas attorney general regarding the dispute.

The university system said in a brief to the AG that SORM was requiring it to procure excessively costly insurance that does not meet its particular needs. A footnote to the opinion said that the dispute between SORM and the university cannot be resolved in an attorney general opinion. The footnote said SORM's rules require it to select lines of insurance based on several factors, including whether the insurance is "necessary to protect the interests of the state" and whether the insurance is "economically advantageous to the state." The footnote said that if the university is correct that it has been prohibited from obtaining insurance that better protects the state's interest at a lower cost, SORM may have a duty to allow the university to obtain such insurance. CSHB 796 would resolve the dispute and remove the university from the SORM risk pool.

There is no evidence that the system's withdrawal from the SORM program would harm other participants. In fact, the removal of the system's four campuses located along the Gulf coast should lower the overall level of risk to the SORM insurance pool. SORM's role to provide insurance for state entities also involves assisting those entities in procuring the lowest-cost coverage possible.

OPPONENTS SAY:

CSHB 796, by removing the Texas State University System as a member of SORM's insurance portfolio, could have a negative impact on the agency's ability to negotiate property insurance rates for other members of the risk pool. It also could prompt other state entities to seek authorization to leave the SORM program.

The global market for property coverage can vary widely depending on

events such as natural disasters and terrorism. If the Texas State University System leaves SORM, it would not be protected from changing market conditions and insurance cost spikes in the future.

When the university rejected SORM's coverage several years ago, it removed about $3 billion in assets from a total pool of about $13 billion in assets. This required SORM to renegotiate insurance coverage, resulting in less overall coverage for state properties and higher premiums. The university system currently is not in legal compliance with state law requiring it to obtain SORM approval to purchase its own property insurance, according to a 2014 AG's opinion.

The university's decision to purchase its own insurance did not provide better coverage at a lower price. SORM followed its administrative procedures and conducted a side-by-side comparison of the system's proposed insurance policy and the one offered by SORM before denying the university's request to purchase outside coverage.

It was precisely because of volatility in the property insurance market that the Legislature created SORM. In fact, it was damage to a component of the Texas State University System – Lamar University in Beaumont – by Hurricane Rita in 2005 that led to SORM's establishment. Three years later, when Hurricane Ike struck Lamar, the institution was better insured through negotiations and advice from SORM and was able to quickly receive insurance payment and resume classes.

NOTES:

The companion bill, SB 781 by Eltife, was referred to the Senate Business and Commerce Committee on March 2.

SUBJECT: Increasing adoptee access to original birth certificates and medical history

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Dutton, Riddle, Hughes, Peña, Sanford, J. White

0 nays

1 absent — Rose

WITNESSES: For — Eric Babino and 10 individuals; (*Registered, but did not testify*: Marian Jane, Elizabeth Jurenovich, and Chavon Withrow, Abrazo Adoption Associates; Marci Purcell, Adoption Knowledge Affiliates, Texas Adoptee Rights; Nicole Kidd, Natalie Munlin, Erskine Mcdaniel, Ingrid Montgomery, and Letitia Plummer, Intended Parents Rights; Katherine Barillas, One Voice Texas; Josette Saxton, Texans Care for Children; Connie Gray and Daryn Watson, Texas Adoptee Rights; Jennifer Allmon, the Texas Catholic Conference of Bishops; and 17 individuals)

Against — None

On — (*Registered, but did not testify*: Elizabeth "Liz" Kromrei, Child Protective Services; Cindy Brown, Department of State Health Services)

BACKGROUND: Health and Safety Code, sec. 192.008 specifies the procedure for adopted individuals to obtain a copy of their original birth certificate. Adoptees are provided with a supplementary birth certificate that contains the names of their adoptive parents and that does not disclose that a person is adopted. Information disclosed from an adoptee's record must be from the supplementary birth certificate.

Individuals who are 18 or older and who know the names of both parents listed on their original birth certificate may obtain a copy. Adoptees who do not know the names of both birth parents may file a petition in the court in which the adoption was finalized, and that court may grant access to the original certificate. If adoptees do not know their birth parents'

names, the individual is entitled to know which court granted the adoption. If the identity and location of the court that granted the adoption is not on file with the state registrar, the registrar must give the adoptee an affidavit stating that the information is not on file, and any court of competent jurisdiction to which the person presents the affidavit may order access to the certificate.

Family Code, ch. 162, subch. E directs the Department of State Health Services (DSHS) to establish and maintain a voluntary adoption registry. Adoptees, birth parents, and biological siblings may choose to participate in the Central Adoption Registry and voluntarily locate one another.

DIGEST:

HB 984 would allow adult adoptees born in Texas or, if the adoptee was deceased, specified family members to obtain a noncertified copy of the adoptee's original birth certificate for the same fee and within the same time frame as any other noncertified birth certificate copy. Copies of original birth certificates under the bill would not need to be provided until July 1, 2016.

Birth parents would have to complete a contact preference form and would be offered the option to complete a supplementary medical history form, both of which would be created by and submitted to the state registrar. The contact form would allow parents to authorize direct contact from the adoptee, to authorize contact through an intermediary specified by the parent, or to prohibit any contact. Completed contact preference forms and medical history forms would be provided to adoptees or to other authorized individuals. DSHS would be required to create the contact preference and medical history forms by January 1, 2016.

The Department of Family and Protective Services (DFPS) or another entity placing a child for adoption would have to inform the birth parents that they were required to provide a completed contact preference form to the department or other entity. DFPS or the relevant adoption agency or entity then would be responsible for forwarding these forms to the state registrar, and the adoption of a child could not be completed until the forms were filed. The bill would create an exception to the contact form requirement if the child's birth parents could not be found or were deceased or if the court determined it would be in the child's best interests

to waive the requirement. A birth parent whose child was adopted before January 1, 2016, could file a contact preference and medical history form with the state registrar until July 1, 2016.

The bill would take effect September 1, 2015, and would apply only to adoptions initiated on or after January 1, 2016.

SUPPORTERS SAY:

HB 984 would make important, common-sense changes to current state law that restricts adoptees' access to copies of their original birth certificates. The current procedure for adoptees is confusing and cumbersome. The Central Adoption Registry is effective only if the adoptee and the birth parents have participated. Many people do not know the names of their biological parents or where they were adopted, and the court-order process is unreliable because judges are inconsistent about whether they grant access to original birth certificates. Barring adoptees from obtaining copies of their original birth certificates while other adults can access these records creates a second class of individuals who do not have full rights to important personal information to which they are entitled.

Family history is a large part of a person's identity. Having access to the identities of one's birth parents could allow someone who was adopted to meet and form bonds with biological parents, siblings, and extended family, which could encourage healing and a healthy sense of self. Additionally, family history is important for medical reasons, not only for the adoptee, but also for the adoptee's children and grandchildren.

HB 984 would strike the right balance of giving adoptees' access to their records while maintaining the privacy of a biological parent if the parent so wished. The additional time between when the bill would take effect and when original birth certificates could be issued would give families enough time to make decisions about the implications of the bill.

The Internet has made information available to such an extent now that previous arguments against birth certificate access related to privacy of the biological parents are not as relevant. Adoptees increasingly are finding family members online.

Additionally, the way society views adoption has evolved. Restricting access to original birth certificates sends the message that adoption is shameful. Privacy surrounding adoptions was a bigger issue during the mid-20th century, when having children out of wedlock was more taboo. Open adoptions are more common now, and a growing number of states have enacted laws allowing complete or partial access to original birth certificates. In states where birth parents can block adoptee contact, few parents do so, and many birth parents have expressed their desire for a reunion with their biological children.

HB 984 would not cause an increase in abandonment of children or abortion. According to data from the Centers for Disease Control and Prevention, abortion rates did not increase after laws providing access to original birth certificates were enacted in various states. In fact, this type of legislation has been supported by many pro-life organizations.

OPPONENTS SAY:

HB 984 would eliminate important restrictions on accessing original birth certificates. Many parents enter into adoption agreements because they are promised confidentiality by lawyers and adoption agencies. Without a guarantee of privacy under adoptions, rates of abortion and abandonment might increase.

Not every parent wants to be found. Families place their children for adoption for a number of reasons, including pregnancies resulting from rape or an extramarital affair or because abortion was not legal or an option. Eliminating safeguards that protect the privacy rights of birth parents also could be harmful to other children the birth parents might have, who might not know this family history and never were intended to know.

HB 984 also could lead to disruption of adoptive families. As more states have increased access to original birth certificates, many people in the United States have decided to adopt children internationally to avoid contact with birth parents. Adoptive parents can have many reasons for not wanting their adopted children to connect with biological family.

Adoptees do not need access to their original birth certificates and birth parents' information to determine their health profile. People can do

genetic screening for this kind of information or can learn about potential health hazards from an annual physical examination.

HB 984's requirement that parental contact forms be filed before moving forward with an adoption would present a challenge for child advocates, children, and adoptive families. A judge choosing not to waive the requirement could delay the completion of the adoption proceedings and could affect the permanency of a child's placement.

OTHER OPPONENTS SAY:

HB 984 would allow all original birth certificates to be accessible unless birth parents retroactively filed no-contact forms, which would result in a forced and unilateral breach of the biological parents' privacy. Instead, both the adoptee and the birth parents should be required to take affirmative steps to allow access to the original birth certificates.

Unlike similar laws in other states, HB 984 would not provide any kind of penal or pecuniary consequence for an individual or agency violating a parent's wish to not have contact with an adopted child.